

and such records are retrieved by reference to a personal identifier.

(2) Requests for notification, access or amendment to personnel records maintained by the Department are governed by parts 293 and 297 of the Civil Service Commission's regulations, title 5, Code of Federal Regulations, and internal Department directives established pursuant to the Commission's regulations.

(3) For systems of records contained within government-wide systems of records under the control of the Department of Labor, the regulations of the agency in possession of such records shall govern the procedure for requesting access to, or amendment of the records, including initial determinations on such requests, while the Department of Labor regulations shall govern all other aspects of safeguarding these records established by the Privacy Act.

#### § 70a.2 Definitions.

For purposes of this part:

(a) *Agency* means an agency as that term is defined in 5 U.S.C. 552(e). It means *each authority of the Government of the United States, whether or not it is within or subject to review by another agency* \* \* \* (5 U.S.C. 551(1)), but it does not include an advisory committee.

(b) The term *individual* means a citizen of the United States (as defined in 8 U.S.C. 1401) or an alien lawfully admitted for permanent residence. This definition distinguishes between the rights which are given to a citizen as an individual under this Act and the rights of proprietorships, including sole proprietors, businesses, and corporations, which are not covered by the Act. Records relating solely to non-resident aliens are excluded from the requirements of this part. However, where a system of records relates to both citizens and nonresident aliens, those portions of the system which relate to citizens or resident aliens must comply with the provisions set forth in these regulations.

(c) The term *maintain* includes the maintenance, collection, use, or dissemination of records, or any combination of these recordkeeping functions. The term *maintain* also connotes control over and responsibility and ac-

countability for a system of records. Effective control of a system of records does not necessarily require physical control of the system (e.g., the Civil Service Commission has control over personnel records not physically within its possession). Furthermore, records on loan from one agency to another may not necessarily be under the control of the latter depending upon the circumstances attendant to, and the conditions of the transfer. Systems of records operated under contract, or in some instances, operated by State or local governments under Federal mandates "by or on behalf of the agency \* \* \* to accomplish an agency function" are, for purposes of this part, under the control of the agency for which the services are being performed, and consequently subject to the requirements set forth in this part. The qualifying phrase *to accomplish an agency function* limits the applicability of the Act to those systems directly related to the performance of Federal agency functions by excluding from its coverage systems which are financed, in whole or in part, with Federal funds, but which are managed by State or local governments for the benefit of State or local governments.

(d) The term *record* means a tangible or documentary record, as opposed to an intangible record, such as information contained in a person's memory. It is any item of information, or any grouping of such items of information, about an individual that includes an identifying particular (i.e., an individual identifier). An *identifying particular* is any element of data (name, number, etc.) or other descriptor (finger print, voice print, photograph) which can be used to identify an individual.

(e) The term *system of records* means a group of any records under the control of an agency from which information is retrieved by reference to the name of an individual or by some identifying particular assigned to an individual. A *system of records* for purposes of this part is a group of records which:

(1) Consists of records as that term is defined in this section,

(2) Are *under the control* of an agency, and

(3) Are retrieved by reference to an individual name or some other personal individual identifier.

*Under the control of* means those official records for which the agency is officially responsible and either has in its possession or exercises dominion over. This excludes those records which, although in the physical possession of agency employees and used by them in performing official functions, are not, in fact, agency records. Uncirculated personal notes, papers and records which are retained or discarded at the author's discretion and over which the agency exercises no dominion or control (e.g., personal telephone lists) are not *agency records* for purposes of this part.

The criteria *are retrieved by* covers those records under the control of an agency which are, in fact, accessed by use of a personal identifier, not merely that a capability or potential capability exists for retrieving personal information in some manner. For example, files on firms which contain personal information about officers of the firms are not records for purposes of this part unless the agency actually retrieves this information by reference to a personal identifier.

(f) The term *statistical record* means a record contained within a system of records which is maintained for statistical research or reporting purposes only, and not used, in whole or in part, in making any determination about an identifiable individual. For a record to qualify as a *statistical record*, it must be maintained as a system of records separately from other systems of records where such other systems contain records that are used to make determinations about the rights, benefits, or entitlements of an identifiable individual. The term *identifiable individual* distinguishes determinations about specific individuals from determinations about aggregates of individuals. An example of the latter is the use of census data for the apportionment of funds based upon population.

Records frequently referred to as *research records* which are only used for analytic purposes, qualify as *statistical records* for purposes of this part, provided such records are not used in making any determination about the

rights, benefits or entitlement of an identifiable individual.

(g) The term *routine use* means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected. The Privacy Act restricts the use of information to such purposes, but also recognizes that there are corollary purposes "compatible with the purpose for which the information was collected" that are appropriate and necessary for the efficient conduct of government, and are in the best interest of both the individual and the public. Thus, the term *routine use* includes the common and ordinary applications for which such records are generally collected and all proper and necessary applications of records without regard to the frequency of such applications.

(h) *Disclosure officer, responsible official and officer authorized to disclose information from Department records* are those officials in this Department, whose titles and addresses are listed in §70a.4(ii) of this chapter, who must pass on requests to inspect or copy record information in their custody. The solicitor of Labor, in the case of appeals and with respect to withdrawal of originals is the disclosure officer for such purposes, as is the Secretary of Labor with respect to the withdrawal of originals. As the head of the Department, the Secretary may invest any officer or employee of the Department with the authority to disclose information from particular records.

### **§70a.3 Conditions of disclosure of information.**

(a) Nothing in this part shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(b) Exempt as provided in paragraphs (d) through (f) of this section, neither the Department, nor its component units, shall disclose any record which is contained within a system of records subject to the requirements of this part, to any person or agency other than to the individual who is the subject of the record, unless the disclosure is to such person's parent or guardian as provided in §70a.5 (c) of this part, or to the representative designated by